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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FIRST APPELLATE DISTRICT**

**DIVISION FOUR**

THE PEOPLE,

Plaintiff and Respondent,

v.

DANIEL PEREZ,

Defendant and Appellant.

A154097

(Solano County  
Super. Ct. No. VCR231295)

Daniel Perez was convicted pursuant to a plea agreement of felony domestic violence (Pen. Code § 273.5, subd. (f)) and two misdemeanor counts of resisting arrest (Pen. Code § 148, subd. (a)(1)). He was sentenced to 180 days in jail and three years' probation. On appeal, Perez contends the trial court abused its discretion by imposing a probation condition prohibiting him from using marijuana. We affirm the judgment.

**I. BACKGROUND**

On the morning of January 23, 2018, two Vallejo police officers responded to a report of domestic violence, where they found Perez's girlfriend, S.F., sitting at the base of a stairwell outside her home. S.F. was crying and said there had been a physical altercation. Perez was at the top of the stairs attempting to enter the apartment. When the officers detained him, he was resistant and combative to the point that they had to call for additional assistance. By the time Perez was taken into custody, both officers suffered minor injuries. S.F. told the officers there had been at least 20 prior incidents of

domestic violence with Perez that she did not report. This time he punched her twice in the jaw and placed her in a chokehold.

Perez was charged with three felonies relating to the January 2018 incident: one count of domestic violence and two counts of resisting an executive officer. At the time, he also had a pending theft charge in an unrelated case. The prosecutor and Perez reached a plea agreement covering both cases. Perez agreed to enter no contest pleas to one felony count of domestic violence and two counts of misdemeanor resisting an officer and to admit a prior domestic violence conviction and violating probation in two other cases. The prosecutor agreed to an indicated sentence of three years' probation with a maximum jail sentence of 180 days, and a dismissal of the theft charge pursuant to a *Harvey* waiver.<sup>1</sup> On March 5, 2018, the trial court accepted Perez's pleas and admissions and dismissed the theft charge.

While awaiting sentencing, Perez was interviewed by the probation department. When asked about the domestic violence offenses, Perez recalled that on the morning of the incident he had used methamphetamine and then he had an argument with his girlfriend when she arrived home after being gone for a few days. Perez admitted that he slapped S.F., but he denied choking her. He admitted struggling with the officers, but he denied intending to cause them harm. He also reported that he had apologized to the victims. Perez expressed mixed feelings when the probation officer asked how he felt about his "current legal predicament." He was not happy to be in custody, but he "was thankful for his current incarceration because it had provided him with the opportunity to gain sobriety." Perez reported that his incarceration since the January incident was "his longest period of sobriety to date." Being sober enabled him to focus on the future and things he wanted to accomplish, and he opined that being on probation would " 'keep [him] straight.' "

The probation report documented Perez's history with the criminal justice system, which began when he was declared a juvenile ward at age 15 following the commission

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<sup>1</sup> See *People v. Harvey* (1979) 25 Cal.3d 754, 758

of a felony assault. Perez also has a prior gang affiliation, and a history of mental health and substance abuse problems. As an adult, he has received three grants of summary probation for domestic violence, theft, and “narcotics related charges.” In recounting his history of drug use to the probation department, Perez reported experimenting with some substances and abusing others. He has experimented with alcohol, heroin and promethazine cough syrup. In 2009, he used cocaine and MDMA. From 2011 until 2012, he was addicted to synthetic cannabinoids. He has been a marijuana user since the age of 13, but his use became less frequent after 2013, when he began using methamphetamine, which he prefers over marijuana. Perez reported taking methamphetamine on an almost daily basis until his January 2018 arrest.

The probation department made a “guarded recommendation” that Perez be sentenced to probation. His risk of re-offense is high, but he expressed remorse for his prior actions and reported that he used his time in custody to achieve clarity and set goals for the future, which include “maintaining sobriety, obtaining gainful employment and establishing his own residence.” Perez appeared willing to comply with probation and would likely benefit from services, specifically domestic violence intervention and substance abuse treatment. Moreover, during his interview, Perez was able to articulate how his methamphetamine use had impacted all areas of his life. The probation department reported that although Perez’s substance abuse does not excuse his conduct, “it provides insight into the various factors which will need to be addressed so that he does not continue to reoffend.”

On April 2, 2018, the trial court held Perez’s sentencing hearing. Consistent with the indicated sentence and probation recommendation, Perez was sentenced to three years’ probation, subject to terms and conditions. The court also adopted the People’s recommendation to impose the maximum indicated jail term of 180 days. Probation conditions require, among other things, that Perez abstain from use of all illegal drugs; not possess drug paraphernalia; not use marijuana; and participate in substance abuse treatment.

At the sentencing hearing, defense counsel objected to the probation condition requiring that Perez not use marijuana on the ground that marijuana use is legal and there is no “nexus” between the condition and Perez’s offenses. The court overruled this objection for several reasons. First, Perez has abused methamphetamine, cocaine, MDMA, and other drugs, and it would not be “appropriate to . . . substitute one addiction for another.” Second, Perez has “been using marijuana since the age of 13 . . . long before it was legal.” Third, a requirement that Perez not use marijuana while on probation is “an appropriate term in terms of addressing his overall substance abuse treatment.”

## II. DISCUSSION

“The Legislature has placed in trial judges a broad discretion in the sentencing process, including the determination as to whether probation is appropriate and, if so, the conditions thereof. [Citation.]” (*People v. Lent* (1975) 15 Cal.3d 481, 486 (*Lent*).) “The primary goal of probation is to ensure ‘[t]he safety of the public . . . through the enforcement of court-ordered conditions of probation.’ (Pen. Code, § 1202.7.)” (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1120 (*Carbajal*).) “The trial court’s discretion, although broad, nevertheless is not without limits: a condition of probation must serve a purpose specified in the statute.” (*Id.* at p. 1121.) In addition, probation conditions that “regulate conduct ‘not itself criminal’ [must] be ‘reasonably related to the crime of which the defendant was convicted or to future criminality.’ ” (*Ibid.* quoting *Lent*, at p. 486.) “As with any exercise of discretion, the sentencing court violates this standard when its determination is arbitrary or capricious or ‘ “ ‘exceeds the bounds of reason, all of the circumstances being considered.’ ” ’ ” (*Carbajal*, at p. 1121.)

Perez contends that the probation condition precluding his “otherwise legal use” or possession of marijuana must be stricken because it is not reasonably related to his current offenses or his future criminality. We disagree. There is no evidence that Perez was high on marijuana when he committed the current offenses or that he is currently addicted to marijuana. But, there is evidence that Perez’s use of marijuana over the past 10 years is part and parcel of a substance abuse problem that played a direct role in the

current offenses and must be addressed for there to be any realistic hope of avoiding future criminality.

When Perez committed the January 2018 offenses, he was high on methamphetamine, unemployed and residing in the home of a girlfriend whom he physically abused. His crimes involved violence and unchecked aggression. Then, while he was incarcerated and awaiting sentencing, Perez experienced sobriety for the longest time in his memory, which led to his insight that substance abuse had negatively impacted every aspect of his life and that he needed the assistance of probation to keep him “ ‘straight.’ ” Under these circumstances, the trial court did not abuse its discretion by adopting a set of comprehensive drug-related probation conditions designed to prevent Perez from relapsing into substance abuse.

Perez cites cases involving a probation condition prohibiting the use of medical marijuana when there was no evidence using marijuana played any role in the defendants’ crimes or would contribute to future criminality. (See *People v. Tilehkooh* (2003) 113 Cal.App.4th 1433, 1444; *People v. Beaty* (2010) 181 Cal.App.4th 644, 660.) Here, Perez never suggested that he used marijuana for a medicinal or pain relief purpose. However, there is evidence that requiring Perez to abstain from all use of marijuana is reasonably related to future criminality because it will promote Perez’s rehabilitation while protecting the public.

Perez contends that there is no basis for concluding that a marijuana condition in particular will facilitate his rehabilitation because the record shows that he is addicted to methamphetamine, not marijuana. We disagree that the marijuana condition must or should be evaluated in isolation. Perez has used marijuana for more than 10 years and during that same period he struggled with multiple addictions. A condition that he abstain from illegal drugs and marijuana is a reasonable way to address the underlying problems that make Perez vulnerable to substance abuse, which in turn leads to conduct that is counterproductive, dangerous and often criminal. Perez disputes this reasoning with two creative arguments.

First, Perez posits that substituting his addiction to methamphetamine with an addiction to marijuana would be a “positive development.” Citing studies outside the record, Perez suggests that marijuana use could alleviate his craving for methamphetamine and other hard drugs. Even if this evidence had been presented below, the trial court did not abuse its discretion by concluding that marijuana abstention would work in combination with other conditions of Perez’s probation—prohibiting illegal drug use, banning the possession of drug paraphernalia and requiring substance abuse treatment—to give Perez the best chance for rehabilitation.

Perez’s second argument is that the marijuana condition is arbitrary because the court did not also prohibit him from using alcohol. Again, Perez goes outside the record for evidence allegedly showing that the link between alcohol and aggression is stronger than the link between marijuana and aggression. Since physical aggression is a problem that has plagued Perez, the studies he cites would be relevant if the court had imposed a condition requiring him to abstain from alcohol. But that hypothetical issue is unrelated to our review of the marijuana condition, which was proper for the reasons outlined above.

In a related claim, Perez contends that because alcohol abuse increases the chances of illegal drug use, the fact that the trial court did not even consider banning the use of alcohol shows that there is no sound basis for precluding the use of marijuana. This logic is unsound. There is no evidence that Perez drinks alcohol regularly. However, he has been smoking marijuana since the age of 13. Moreover, his admission that he decreased but continued his marijuana use after he started using methamphetamine is evidence that in his mind these two activities are related. Even absent that admission, the trial could have concluded reasonably that the marijuana condition would further the goal of maintaining Perez’s sobriety and thereby facilitate his rehabilitation.

Finally, Perez contends the trial court made a rote assumption that there is a nexus between lawful use of marijuana and future criminality, which is indicative of an arbitrary, illogical bias against marijuana use. This contention is belied by evidence in the record about Perez’s specific substance abuse problems and history of failing to

succeed on probation, which provides ample basis for concluding that a condition requiring Perez to refrain from using marijuana while on probation will decrease the likelihood that he will abuse illegal drugs. Thus, the probation condition is neither arbitrary nor illogical and the trial court did not abuse its discretion by imposing it.

### **III. DISPOSITION**

The judgment is affirmed.

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TUCHER, J.

WE CONCUR:

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POLLAK, P. J.

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BROWN, J.